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Supreme Court, U.S.
FILED
JAN 22 1997
CLERK

No. 96-792

In The
Supreme Court of the United States
October Term, 1996

LYNNE KALINA,
Petitioner,
v.
RODNEY FLETCHER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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aBCD Legal Printers, Seattle, Washington

43 pp

QUESTION PRESENTED

Under the analysis dictated by this Court's precedents, which focuses on "the nature of the function performed, not the identity of the actor who performed it," Forrester v. White, 484 U.S. 219, 229 (1988), is a prosecutor who acts as the complaining witness on an arrest warrant application entitled to absolute, rather than qualified, immunity from suit under 42 U.S.C. § 1983?

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COUNTERSTATEMENT OF THE CASE

The statement of the case in the Petition begins by mischaracterizing the allegations in Respondent's lawsuit. Those allegations were clearly set forth in his Complaint, a copy of which is attached as Appendix A to this Brief.

As the Complaint shows, contrary to Petitioner's assertion, Respondent Rodney Fletcher has never alleged "that Ms. Kalina violated his civil rights when she initiated criminal charges against him and sought an arrest warrant to secure personal jurisdiction." Pet. 3. Mr. Fletcher's allegation has always been limited to Ms. Kalina's separate and distinct action in "prepar[ing] and fil[ing] a Certification for Determination of Probable Cause." Complaint, App. A2. It was in that role of a complaining witness that the Complaint alleged "defendant Lynne Kalina made false statements about Rodney Fletcher, with reckless disregard for the truth, knowing that her

certification would result in Mr. Fletcher's arrest and prosecution." Ibid.

A. Respondent's Arrest.

In the summary judgment motion from which the appeal below was taken, Petitioner did not contest the facts set forth in the Complaint. The Complaint alleged that in early 1992 Respondent Rodney Fletcher was hired to do construction work inside the Our Lady of Guadalupe School in Seattle, Washington. App. A-3. After the school was burglarized in July of that year, Seattle police unsurprisingly found a fingerprint inside which matched Mr. Fletcher's. A police report regarding the fingerprint match was forwarded to the King County Prosecuting Attorney's office, and thence to Petitioner Lynne Kalina, in its filing unit. Pet. App. 10a, 16a.

Ms. Kalina decided to file criminal charges against Mr. Fletcher. Ibid. Ms. Kalina did this by preparing and signing the only document necessary to initiate a felony

prosecution in the State of Washington, a criminal Information.[1] In addition, for reasons not yet explained, Ms. Kalina sought to have Mr. Fletcher arrested, rather than utilizing the summons procedure provided for in Washington Criminal Rule 2.2(b).[2] Toward that end, she prepared a Motion and Order Determining the Existence of Probable Cause, Directing Issuance of Warrant and Fixing Bail. Pet. App. 13a-14a. Attached to the Motion was a copy of one of the police reports, which said in conclusory

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[1]The statement of facts in the Petition refers to the Motion for an Arrest Warrant, and its supporting certification, as "charging documents" which Ms. Kalina prepared "[a]s part of her initiation of the prosecution...." Pet. 3. These characterizations are inaccurate under Washington law, which provides that "[n]o pleading other than an indictment, information or complaint shall be required on the part of the state in any criminal proceeding in any court of the state...." RCW 10.37.010.

[2]The full text of the current version of this Rule, which is only partly set out in the body of the Petition, appears at Pet. App. 21a through 23a. The Rule was formally amended in 1995, in a manner that is not material to any of the issues here; for the Courts' information, the full text of the Rule as it appeared in 1992 is set out in Appendix B to this Brief.

terms that Mr. Fletcher was suspected of the crime because of the location of his fingerprint. Pet. App. 16a.[3]

Rather than rely on that sworn police report Ms. Kalina prepared her own "Certification for Determination of Probable Cause" in support of the Motion. Pet. App. 17a. In that document, she took on a distinct role: the role of a "complainant" or "witness" providing "an affidavit ... or sworn testimony establishing the grounds for issuing the [arrest] warrant." See Wash. CrR 2.2(a); App. B1; Pet. 3.

Ms. Kalina's declaration contained two statements that were patently false and unsupported by the police reports she had been provided. One was the assertion that "Rodney Fletcher ... has never been associated with the

[3]The arrangement of Exhibit B to the Petition does not correspond exactly to the form of the documents as they were submitted below. There was no break between the Motion and Order; they constituted a single two-page document, to which the police report (Pet. App. 16a) was attached.

school in any manner and did not have permission to enter the school or to take any property." Pet. App. 17a-18a. The other was that a witness had picked a photograph of Mr. Fletcher from a photo montage, identifying him as a person who was in possession of the school's computer. Pet. App. 18a. In fact, the police reports provided Ms. Kalina stated clearly that the witnesses who were shown montages including Mr. Fletcher's photograph did not identify him as the suspect. App. A-3.

On the basis of Ms. Kalina's declaration, a warrant was issued for Mr. Fletcher's arrest, and he was later arrested and jailed. When his retained counsel discovered Ms. Kalina's testimonial errors, the charges against him were dismissed. App. A-4.

B. The Proceedings Below.

Mr. Fletcher subsequently brought this action pursuant to 42 U.S.C. § 1983, claiming that Ms. Kalina had caused him to be subjected to a violation of his federal constitutional rights by making the false statements in her certification. App. A2. Before any discovery was had, Ms. Kalina moved to dismiss, claiming that her actions in preparing the Certification were covered by absolute prosecutorial immunity.

The District Court denied Ms. Kalina's motion, holding her actions were not covered by absolute immunity and reserving decision on the fact-based issue of qualified immunity. Pet. App. 8a. Ms. Kalina appealed interlocutorily, and the Court of Appeals unanimously affirmed, holding she was "not immune for her actions in filing a declaration for an arrest warrant." Pet. App. 7a.

REASONS FOR DENYING THE WRIT

I. THE DECISIONS BELOW CORRECTLY HELD THAT A PROSECUTOR WHO ACTS AS A COMPLAINING WITNESS PERFORMS A FUNCTION OUTSIDE THE SCOPE OF HER ABSOLUTE IMMUNITY.

The scope of absolute immunity under § 1983 depends on "the nature of the function performed, not the identity of the actor who performed it." Forrester v. White, 484 U.S. 219, 229 (1988). The focus of the decisions below was, therefore, properly "the nature of the function performed" by Petitioner Kalina that gave rise to this lawsuit. See Pet. App. 4a.

Ms. Kalina performed more than one function with respect to Rodney Fletcher's prosecution and arrest.[4] One of those functions was clearly prosecutorial: preparing and signing the Information by which Mr. Fletcher was

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[4] A prosecutor may perform more than one function in a single case, some of them covered by qualified immunity and others not. Burns v. Reed, 500 U.S. 478, 492 (1991).

charged. See Imbler v. Pachtman, 424 U.S. 409, 431 (1996). That was not the function for which Mr. Fletcher sued her, however. Mr. Fletcher's Complaint against Ms. Kalina charged her with misconduct in the performance of a separate and distinct function which was not "prosecutorial" at all: acting as a complaining witness on a declaration offered to establish probable cause for Mr. Fletcher's arrest. See App. A2-A4.

The decision below distinguished this function, which could as easily have been performed by "a police officer or complaining witness" (Pet. App. 6a), from the "advocatory" functions that are exclusively the province of prosecutors and therefore protected by the bar of their absolute immunity. Pet. App. 3a-4a. Petitioner's attack on that decision clouds that distinction. If that distinction is kept clear, there is no conflict at all between the decision below and this Court's precedents; indeed, those precedents dictated the result below. Nor is there any division among

the lower courts; nor will the decision below hamper prosecutors in any significant way. There is therefore nothing in this case that calls for this Court's review.

A. It Is Not a Prosecutorial Function to Act As A Witness Whose Testimony Is Used To Establish Probable Cause.

The Petition characterizes the conduct for which Ms. Kalina was sued as a "part and parcel" of her "prosecutor's charging function." Pet. App. 6, 12 n.33. That characterization has no basis in the law of the State of Washington.

Washington law permits prosecutors to initiate felony prosecutions simply by filing an Information. RCW 10.37.015. In fact, where the Information procedure is utilized, a Washington statute provides specifically that no other pleading is required to bring a felony charge. RCW 10.37.010. Washington law neither requires, nor explicitly permits, prosecutors to sign or submit the kind of

"Certification for Determination of Probable Cause" filed by Ms. Kalina in this case.

The only Washington statute or court rule authorizing Ms. Kalina's "Certification" was Washington Criminal Rule (CrR) 2.2. That Rule provides that when felony charges are filed, whether by indictment or information, a "court may direct the clerk to issue a warrant for the arrest of the defendant ...." Wash. CrR 2.2(a); App. B1; see Pet. 2. Alternatively, the same Rule permits the court to have the defendant served with a summons, thereby obtaining jurisdiction without an arrest. Wash. CrR 2.2(b)(1); Pet. App. 21a.[5] In order to issue an

[5]The availability of this summons procedure belies Petitioner's argument that obtaining an arrest warrant is "an integral step in the judicial process," because "due process requires that a defendant be present in court...." Pet. 12. A defendant's presence can be obtained by summons as well as by arrest. A summons directing a defendant to appear and answer a criminal charge requires no showing of probable cause, Wash. CrR 2.2(b), and implicates no constitutional right. Albright v. Oliver, 510 U.S. 266 (1994).

(continued...)

arrest warrant, the Rule provides that the court must first find "probable cause based on an affidavit, ... or sworn testimony ...." Wash. CrR 2.2(a). The Rule refers to the persons who provide this evidence as "complainant[s]" and "witnesses". Ibid. It says nothing about Prosecuting Attorneys.

Contrary to Petitioner's claim, nothing in Washington law imposes on prosecutors the "duty" to act as complaining witnesses when they seek arrest warrants. Pet. 4. RCW 36.27.020(6) requires Prosecuting Attorneys to "[i]nstitute and prosecute proceedings before magistrates for the arrest of persons charged with or reasonably

[5](...continued)
Moreover, even if it were true that Mr. Fletcher's physical arrest was a necessary prerequisite to his prosecution, that cannot mean that every action taken toward that end is prosecutorial. If Ms. Kalina had herself physically performed the arrest, surely she would not be immune simply because she happened to be the deputy prosecuting attorney simultaneously prosecuting the case. No more should her immunity extend to the separate function of complaining witness.

suspected of felonies," not to be the witnesses in those proceedings. As should be evident from its lack of citations to authority, Respondent's explanation of the role of the "certification or affidavit signed by the prosecuting attorney" (Pet. 4) describes a common practice, not a legal function.[6]

As the decision below observed, the certification filed by Ms. Kalina could have just as easily have been signed by "a police officer or complaining witness ...." Pet. App. 6a. Under Washington law, any citizen can be a complaining witness. 13 Ferguson, Washington Criminal Practice and Procedure § 2745 at 39 (1984).[7] Ironically,

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[6]We do not deny that many Washington prosecutors swear out probable cause affidavits, like Ms. Kalina did. The commonness of the practice accounts for the numerous occasions on which Washington appellate courts have found certificates relevant to other sorts of issues. See Brief of Petitioner's Amici at 3-4.

[7]Every application for an arrest warrant is, in a sense, the "first step" in a judicial proceeding. A person taken into custody pursuant to any arrest warrant must be (continued...)

Ms. Kalina's Motion was supported by a sworn police report which met the formal requirements of the Rule; but that police report did not make out probable cause, because (unlike Ms. Kalina's certification) it adhered to the facts.

The nature of the "conduct" at issue here--swearing to facts as a complaining witness--does not change according to the witness' official title (or lack thereof). The decisions below correctly so held.

B. This Court Has Held That A Witness Whose Testimony Is Used To Establish Probable Cause Is Protected Only By Qualified Immunity.

Although § 1983 establishes no immunities on the face of the statute, this Court has read it "in harmony with general principles of tort immunities and defenses rather than in derogation of them." Imbler v. Pachtman, 424 U.S.

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[7](...continued)
taken to superior court as soon as practicable after the detention is commenced. See Wash. CrR 3.2B(a)(1)(i); Wash. CrRLJ 3.2.1; County of Riverside v. McLaughlin, 508 U.S. 44 (1991).

409, 418 (1976). The initial inquiry is whether an official claiming immunity under § 1983 can point to some common-law counterpart to the privilege he asserts. "For executive officers in general ... qualified immunity represents the norm." Harlow v. Fitzgerald, 457 U.S. 800, 807 (1982). The defendant official in a § 1983 action bears the burden of showing that the conduct for which he seeks immunity would have been privileged at common law in 1871, the time of the enactment of § 1983. Buckley v. Fitzsimmons, 509 U.S. 259, 267 (1993). "Thus, if application of the principle is unclear, the defendant simply loses." Id. at 281 (Scalia, J., concurring).

> The presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties. We have been quite sparing in our recognition of absolute immunity, and have refused to extend it any further than its justification would warrant.

Burns v. Reed, 500 U.S. at 486-87 (internal quotation marks and citations omitted).

"In 1871, the generally accepted rule was that one who procured the issuance of an arrest warrant by submitting a complaint could be held liable if the complaint was made maliciously and without probable cause." Malley v. Briggs, 475 U.S. 335, 340-41 (1986). At common law, absolute immunity was not enjoyed by "complaining witnesses who, like respondents, set the wheels of government in motion by instigating a legal action." Wyatt v. Cole, 504 U.S. 158, 164-65 (1992).

A law enforcement officer has only qualified immunity for his or her actions in applying for an arrest warrant. Malley v. Briggs, 475 U.S. at 342. The functional test of Imbler and its progeny thus mandate that only qualified immunity protects a prosecutor who takes on that very same role. It would be incongruous to grant absolute immunity to a deputy prosecutor who chooses to act as a complaining witness, but to deny such immunity to a police officer performing exactly the same function. See

Burns v. Reed, 500 U.S. at 495 (denying absolute immunity to prosecutor performing function for which police officers receive only qualified immunity); Buckley v. Fitzsimmons, 509 U.S. at 273. ("[T]he actions of a prosecutor are not absolutely immune merely because they are performed by a prosecutor.... When a prosecutor performs the investigative functions normally performed by a detective or police officer, it is neither appropriate nor justifiable that, for the same act, immunity should protect the one and not the other.")

This Court has thus reserved absolute immunity for purely prosecutorial functions, such as "initiating a prosecution and in presenting the State's case," Imbler v. Pachtman, 424 U.S. at 431 (1976), or presenting of testimony by law enforcement officers during a hearing on an application for a search warrant, Burns v. Reed, 500 U.S. at 491. "Those actions clearly involve the prosecutor's role as advocate for the State, ..." Ibid.

"[I]t is the nature of the function performed, not the identity of the actor who perform[s] it, that inform[s] [the Court's] immunity analysis." Id. at 506 (Scalia, J., concurring in part and dissenting in part). The "function performed" by Ms. Kalina was exactly the same as "the function performed" by the defendant officer in Malley v. Briggs. She personally vouched, under oath, for "facts" offered to a judicial officer in support of the arrest warrant application, which was submitted along with a criminal complaint. See Malley v. Briggs, 475 U.S. at 338. This Court rejected the officer's claim of absolute immunity in Malley, finding no common-law tradition of absolute immunity for an official whose complaint causes a warrant to issue. Malley, 475 U.S. at 342. The Court said that, since § 1983 "on its face does not provide for any immunities, we would be going far to read into it an absolute immunity for conduct which was only accorded qualified immunity in 1871." Ibid. (emphasis added)

Because of that, and because "[c]omplaining witnesses were not absolutely immune at common law," Malley, 475 U.S. at 340-41, the courts below had no alternative but to rule as they did.

C. The Lower Federal Courts Have Not Extended Absolute Immunity To Prosecutors Who Act As Complaining Witnesses.

There is no division among the circuits on the narrow question presented here. Only one other reported post-Imbler case appears to have directly addressed it. Kohl v. Casson, 5 F.3d 1141 (8th Cir. 1993). In Kohl, the Eighth Circuit said that a prosecutor is absolutely immune for appearing before a judicial officer to present evidence or argue the law in support of an arrest warrant, because those functions "involve judicial acts and are intimately related to the judicial phase of the criminal process." 5 F.3d at 1146. However, like the courts below, Kohl held that a prosecutor does not have absolute immunity if he or

she chooses to act as a witness in support of an application for an arrest warrant.

> [W]here the prosecutor switches functions from presenting the testimony of others to vouching, of his own accord, for the truth of the affidavit presented to the judicial officer, the prosecutor loses the protection of absolute immunity and enjoys only qualified immunity, just as the police officer was held to have in Malley [v. Briggs].

Kohl, 5 F.3d at 1146.

None of the cases cited by Petitioner address this issue, because none of them involved allegations that a prosecutor had acted as the complaining witness on a warrant application. In Joseph v. Patterson, 795 F.2d 549 (6th Cir. 1986), the allegation was "that the prosecutors knowingly obtained issuance of criminal complaints and arrest warrants against the Josephs based on false, coerced statements elicited from Morrow by the prosecutors and police...." 795 F.2d at 555 (emphasis added). The court found the defendants protected by absolute immunity from

that claim, because "[t]he decision to file a criminal complaint and seek issuance of an arrest warrant are quasi-judicial duties involved in 'initiating a prosecution,' which is protected under Imbler...." Ibid. (emphasis added). On a separate claim, arising (much like the claim in this case) from "[t]he preparation of an application for [a] ... search warrant," the court in Joseph did not extend absolute immunity, but found "a factual inquiry is necessary in order to determine the role in which this challenged activity was conducted." 795 F.2d at 556.

In Lerwill v. Joslin, 712 F.2d 435 (10th Cir. 1983), the legal and constitutional basis of the plaintiff's claim was unclear, even to the Court of Appeals. See 712 F.2d at 436 n.1. However, there is no indication that the gravamen of the complaint was that the prosecutor had himself made false statements in seeking an arrest warrant. Instead, the Lerwills' complaint appeared to be simply that the part-time city attorney had acted beyond his authority

in "present[ing]" a felony complaint to a justice of the peace, and "request[ing]" an arrest warrant. 712 F.2d at 436. Thus, the Court in Lerwill held the defendant city attorney was immune for "seeking a warrant for the Lerwills' arrest," "acting as an advocate for the State," "present[ing] ... arguments to a justice of the peace," and "seeking a warrant for the arrest of a defendant against whom he has filed charges...." 712 F.2d at 437-38. The Court in Lerwill said nothing about whether the immunity it afforded would apply if the prosecutor stepped out of his role as an advocate and into the nonprosecutorial role of a witness or complainant.[8]

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[8]The Tenth Circuit's recent decision in Roberts v. Kling, ___ F.3d ___ (1997 WESTLAW 2885, filed January 6, 1997), similarly involved a District Attorney's investigator who was sued for "swearing out a complaint and seeking an arrest warrant" (id. at *3), not for making false statements in a nonadvocative document. Under New Mexico law, a "complaint" is the pleading that initiates a prosecution. See N.M. Stat. 31-1-4.

The two civil forfeiture cases Petitioner cites are similarly distinguishable. In Erlich v. Giuliani, 910 F.2d 1220 (4th Cir. 1990), the Court analogized the function of a prosecutor preparing a seizure warrant in a forfeiture proceeding to the act of a prosecutor seeking an indictment in a criminal case, a function clearly subject to absolute immunity. Erlich, 910 F.2d at 1224 (citing Malley, 475 U.S. at 340-43). The Erlich decision specifically distinguished this from the function performed by a complaining witness seeking an arrest warrant, Erlich, 910 F.2d at 1224, like the police officer in Malley and Ms. Kalina.

In Schrob v. Catterson, 948 F.2d 1402 (3rd Cir. 1991), the Court followed Erlich, but found the question "more difficult" with respect to the prosecutor's "alleged action in the preparation of an application for the search warrant." 948 F.2d at 1413. Schrob also addressed an allegation regarding an alleged false statement by the

prosecutor in the course of a colloquy with the court during a seizure warrant application. 948 F.2d at 1417. The court in Schrob "easily disposed of" that issue, citing to "lawyers[']... absolute immunity at common law for making false and defamatory statements in judicial proceedings." Ibid. There was no issue in Schrob directly analogous to the situation here--a false statement by a prosecutor, made not in a colloquy, but under oath, and not as a "lawyer", but a witness.

These cases stand for the unremarkable proposition that a prosecutor's preparation and presentation of an arrest or seizure warrant--lawyer's functions--are protected by absolute immunity. There is some disagreement about this. See, e.g., McSurley v. McClellan, 697 F.2d 309, 320 (D.C. Cir. 1982) (per curiam) (holding that a prosecutor's preparation of arrest and search warrants is a "nonadvocative" function that is not protected by absolute immunity). But there is and can be no doubt, after Malley,

that the function of complaining witnes is distinct and outside the absolute immunity shield.

D. Depriving Prosecutors of Absolute Immunity When They Act As Complaining Witnesses Impinges On No Valid State Interest.

This Court has repeatedly said hat absolute immunity is not a matter that is subjec to "freewheeling policy choice[s]," but exists only to th extent that it is consistent with historical practice. Bukley v. Fitzsimmons, 509 U.S. at 268; Malleyv. Briggs, 475 U.S. at 341. Ignoring that admonition, Petiioner and her amici raise the spectre of crippled law enforcement in an effort to persuade the Court to expand their proection. See Pet. 12-14; Brief of Petitioner's Amici at 6-7. These arguments are no more credible than they are relevant.

There is certainly no factual bais for Petitioner's concerns that the decision below will rsult in a flood of litigation. See Pet. 13; Brief of Petitioner's Amici at 6. As Petitioner's amici point out, Washington prosecutors

have filed charges by information by over 80 years, and for decades have commonly prepared their own certificates of probable cause (Brief of Petitioner's Amici at 2-3); yet in no reported case other than this one has a prosecutor been sued for that action. Doubtless, that is because the vast majority of prosecutors, in preparing such certificates, accurately report the facts contained in the police reports--thereby insuring themselves qualified immunity, even if the police reports prove inaccurate.[9]

The claim that prosecutors will be deterred or distracted from performing their duties out of fear of civil litigation, in the event they can be shown to have provided recklessly or willfully false testimony, is no more credible.

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[9]The Petition's claim that the decision below requires "only" that "a defendant turned litigant ... allege that the injury occurred as a result of the arrest rather than the prosecution" (Pet. 13) is pure hyperbole. The decision below removes absolute immunity only when the prosecutor acts as a complaining witness whose testimony causes an arrest; and even in those circumstances the shield of qualified immunity remains.

A prosecutor (or any other lawyer) who submits her own affidavit to a court, ex parte, risks criminal prosecution, and bar discipline, if the statements in that affidavit are willfully false. RCW 9A.72.040 (false swearing); Washington RPC 3.3(a), (f) (candor toward tribunals). An additional threat of civil litigation--on which the prosecutor is entitled to be defended and indemnified--can hardly add significantly to their worries.

If prosecutors have such an exaggerated fear of civil litigation, however, they have a simple recourse: they can use the testimony of police officers or other witnesses, instead of their own, to support their warrant applications.[10] Since Wasnington police reports are routinely made out under oath--as was the police report Ms. Kalina herself submitted in this case, Pet. App. 16a--that would not even

[10] Amici's suggestion that "resurrection of the grand jury system is the only way to avoid suits for damages from a defendant who resents being arrested to answer a charged crime" (Brief of Petitioner's Amici at 7) ignores this simple expedient.

impose a significant administrative burden. It would not only insulate prosecutors from civil liability; it would also improve the reliability and accuracy of information utilized to deprive citizens of their freedom by reducing the number of rewrites and repetitions, and focusing responsibility for any errors.

Utilizing police or other witness affidavits would also, of course, insure a wrongly arrested citizen has recourse for any deliberate or reckless falsehood. The deterrent effect of such recourse aids, does not retard, effective law enforcement; for unfounded "requests for warrants are at best a waste of judicial resources; at worst, they lead to premature arrests, which may injure the innocent or, by giving the basis for a suppression motion, benefit the guilty." Malley v. Briggs, 475 U.S. at 344. There is no reason to depart from the common law or the functional test for absolute immunity to shield reckless

falsifications in support of such requests from all civil liability.

CONCLUSION

Certiorari should be denied.

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ATTORNEYS FOR RESPONDENT
*Counsel of Record

January 22, 1997.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

RODNEY FLETCHER Plaintiff	)	No.
vs.	)	COMPLAINT FOR DAMAGES
LYNNE KALINA Defendant	)	(Civil Rights 42 U.S.C. § 1983)

Plaintiff Rodney Fletcher, through his undersigned counsel, alleges as follows:

I. PARTIES

1.1 Rodney Fletcher is an adult resident of King County in the State of Washington.

1.2 Lynne Kalina is an adult resident of the State of Washington with a business address of King County Courthouse, 516 Third Avenue Room W554, Seattle, Washington.

II. JURISDICTION

2.1 This court has jurisdiction over this action pursuant to 42 U.S.C. § 1343, § 1983, and the Fourth and Fourteenth Amendments to the United States Constitution.

2.2 Plaintiff is a resident of King County, Washington and the events described herein occurred in King County, Washington.

III. FACTS

3.1 Defendant Lynne Kalina at all times relevant to this matter was employed by Norm Maleng, King County Prosecuting Attorney and by the Office of the King County Prosecuting Attorney, an Agency of King County.

3.2 On or about December 14, 1992 Lynne Kalina prepared and filed a Certification for Determination of Probable Cause ("Certification") a copy of which is attached as Exhibit A.

3.3 In the Certification, defendant Lynne Kalina made false statements about Rodney Fletcher, with reckless disregard for the truth, knowing that her certification would result in Mr. Fletcher's arrest and prosecution.

3.4 In the Certification, defendant Lynne Kalina falsely accused Mr. Fletcher of breaking into the Our Lady of Guadalupe School in King County, Washington, and of committing certain acts while within the school, including damaging a vending machine and stealing property.

3.5 In the Certification, Ms. Kalina falsely stated that Mr. Fletcher had never been associated with the school and did not have permission to enter the school. In fact, Mr. Fletcher had been hired to install partitions and had performed extensive work, at and for the school, was known to the school personnel and was authorized to enter onto the premises.

3.6 In the Certification, Ms. Kalina falsely stated that Mr. Fletcher was identified from a photo montage by an eye witness. In fact, two eye witnesses failed to identify Mr. Fletcher from the photo montage and now witness identified him. These failed photo identifications were detailed specifically in the Seattle Police Department reports and statements that were available to Ms. Kalina at the time that she prepared the Certification.

3.7 Pursuant to the recitations in the Certification, an arrest warrant was issued for Rodney Fletcher and on September 24, 1993 Mr. Fletcher was arrested and incarcerated on a charge of Burglary in the Second Degree.

3.8 On or about October 26, 1993 the aforementioned charges were dismissed on motion of the Prosecuting Attorney.

IV. DAMAGES

4.1 As a direct and proximate result of the actions of Lynne Kalina described above, plaintiff suffered a loss of liberty, incurred legal fees, suffered damage to his reputation, experienced pain and suffering and emotional distress, suffered wage loss, and lost earning capacity and the enjoyment of life. Some of these damages are ongoing and permanent in nature.

V. CLAIM FOR RELIEF

5.1 The actions of defendant Kalina as alleged herein violated plaintiff's civil and constitutional rights, including the right to be free from unreasonable seizures and from deprivation of liberty, without due process of the law, guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983 et seq.

VI. PRAYER

WHEREFORE, plaintiff prays for the following relief against defendant:

1. Full compensatory damages;

2. Punitive damages;

3. Attorney fees and costs under 42 U.S.C. 1988; and

4. Such other relief as is reasonable and equitable.

DATED this 12 day of January, 1995.

LAW OFFICES OF
BRADY R. JOHNSON

By /s/
Brady R. Johnson WSBA #21732

MacDONALD, HOAGUE & BAYLESS

By /s/
Timothy K. Ford, WSBA #5986

CAUSE NO. 92-1-07863-1

CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

That Lynne Kalina is a Deputy Prosecuting Attorney for King County and is familiar with the police report and investigation conducted in Seattle Police Department case No. 92-334054;

That this case contains the following upon which this motion for the determination of probable cause is made;

Our Lady of Guadalupe School is located at 3401 Southwest Myrtle Street, Seattle, King County, Washington. George Christman is the custodian of the school. On July 27, 1992, at 6:50, Christman discovered that sometime during the previous night, the kitchen window had been pried open in a manner which would allow entry into the school. Christman called the police.

Investigation showed that the burglar had cut a hole in a plexiglass kitchen window, reached in, and pried open the window. The burglar had ripped out a restrictive bar to allow the window to open fully. Once inside the building, the burglar had searched through cabinets and forced open several doors. The burglar had forced open a Coke machine, taking about $2 in change. The burglar had climbed over a glass partition into the school office and had taken a computer, two printers, and a modem. The burglar exited out of the office door.

Seattle Police Department Officer Burton was able to lift fresh latent prints from the partition and from a paper clip box which had been emptied. Seattle Police Department Identification Technician Holshue positively identified several prints lifted as Rodney Fletcher's prints. The defendant, Rodney Fletcher, has never been associated with the school in any manner and did not have permission to enter the school or to take any property.

On July 27, 1992, at 2:30 p.m., the defendant entered Empire Electronics and contacted employee Lance Brandon. The defendant asked Brandon to give an appraisal on a computer which was in his car. Brandon went to a car which was occupied by Jerry Ward. Brandon told the defendant that the computer was worth about $200, but wanted to see if the computer was in working order before buying it. The defendant brought the computer into the store.

Brandon noticed that the computer's serial number had been removed. Brandon told the defendant that he needed the serial number, so the defendant left the store to retrieve the serial number. Brandon worked with the computer while the defendant was absent and noticed information on the hard drive indicating that the computer belonged to Our Lady of Guadalupe School.

Brandon called the police, but before the police arrived, the defendant and Ward returned to the store. Brandon told the defendant that he could not buy the computer because the defendant did not have any identification. The defendant took the computer and left the store. Brandon later identified the defendant from a photo montage.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct. Signed and dated by me this 7 day of December, 1992, at Seattle, Washington.

/s/
Lynne Kalina, WSBA #91002

Former CrR 2.2(a) (1992)

(a) Warrant of Arrest. If an indictment is filed or an information is filed, the court may direct the clerk to issue a warrant for the arrest of the defendant. Before ruling on the request for a warrant, the court may require the complainant to appear personally and may examine under oath the complainant and any witnesses the complainant may produce. A warrant of arrest must be supported by an affidavit or affidavits or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically or stenographically. The court must determine that there is probable cause before issuing the warrant. The finding of probable cause may be based on evidence which is hearsay in whole or in part, subject to constitutional limitations.